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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/562,766

12/27/2005

Henri-Jacques Tochon-Danguy

7847

60333

7590

07/28/2008

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EXAMINER

NIESZ, JASON KAROL

ART UNIT

PAPER NUMBER

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DELIVERY MODE

07/28/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/562,766	Applicant(s) TOCHON-DANGUY ET AL.	
	Examiner JASON K. NIESZ	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>03/16/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claim 20 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 07/10/2008.
2. Applicant's election without traverse of claims 11-19 in the reply filed on 07/10/2008 is acknowledged.
3. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

4. The information disclosure statement (IDS) submitted on 03/16/2006 was considered by the examiner.

Claim Objections

5. Claim 19 is objected to because of the following informalities: The word "valves" is misspelled as "values." Appropriate correction is required.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Matsuno et al (US Patent 5,039,863).

In Re claim 11 with regards to the “means for radiation shielding of said radioactive dose dispensing apparatus” and “means for controlling a mix of radioactive stock solution and dilution stock solution” and “means for detecting radioactivity of said mix of radioactive stock solution and dilution stock solution.”, these limitations meets the three-prong test per MPEP 2181 and thereby invoke 35 USC 112 6th paragraph. In the instant specification, page 5, paragraph 3, the “means for radiation shielding” is shown. In the instant specification, page 3, lines 14-15 and page 4, lines 4-6, the “means for controlling a mix” is shown. In the instant specification, page 6, paragraph 5 the “means for detecting” is shown. In Figure 1 Matsuno discloses shielding around a dispensing bottle (11), a diluted solution bottle (15) and a receiving container (12). In Figure 1 Matsuno also discloses a series of switching valves (6a-6i) and a computer (14). Finally, Matsuno discloses a radiation detector (Column 6, lines 9-11). In Matsuno, Shielding is considered to be an equivalent to applicant's means for radiation shielding, switching valves with a computer are considered to be an equivalent to applicant's means for controlling a mix, and a radiation detector is considered to be an equivalent to applicant's means for detecting because they perform the same function in substantially the same way and produce substantially the same result as the corresponding elements in applicant's specification. See MPEP 2183.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 12-17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsuno in view of Cassel (US Patent 5,911,252).

In Re claim 12 Matsuno as applied to claim 11 above discloses all the limitations, but doesn't disclose a plunger-operated disposable syringe. With respect to Figure 1 Cassel discloses a dispensing system used to fill disposable syringes with a mixture of a radioactive solution and a diluent. This system comprises a disposable syringe (52). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Matsuno device to fill syringes directly by using the disposable syringe as the container, as taught by Cassel. This configuration allows the system to fill a syringe directly instead of filling the solution into containers to be later transferred to syringes. This can be especially beneficial in the case of short lived solutions as described in Matsuno (Column 8).

In Re claim 13 Matsuno in view of Cassel as applied to claim 12 above discloses all the limitations but doesn't disclose a shielded syringe receptacle. However, in Figure 1 Matsuno discloses a shielded receptacle (12) for the receiving container (10a). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide analogous shielding in the event that the receiving container was replaced by a syringe, in order to prevent dangerous radiation leakage.

In Re claims 14 and 15 with reference to Figure 1 Matsuno discloses a linearly actuating drive means (7) which, in the course of dispensing the fluid to the receiver

(Column 6, lines 23-25) would hydraulically actuate the plunger on the receiving syringe of the combined apparatus.

In Re claims 16 and 17 with reference to Figure 1 Matsuno discloses a programmable logic controller (14) operable via a computer interface (Column 8, lines 59-60).

In Re claim 19 Matsuno in view of Cassel as applied to claim 11 discloses all the limitations, but doesn't disclose pinch valves. With respect to Figure 1 Cassel discloses pinch valves (located on the fluid lines directly below the tanks). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Matsuno apparatus by using the pinch valves taught by Cassel as the controlling valves for the dispensing system, in order to provide a valve which acts on but does not come in direct contact with potentially contaminating radioactive fluid.

10. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Matsuno in view of Stach et al. (US Patent 3,935,883).

In Re claim 18 Matsuno as applied to claim 11 above discloses all the limitations, but doesn't disclose the use of a disposable tubing assembly. Stach discloses a liquid filling apparatus with disposable fluid conducting elements (title). Therefore, it would have been obvious to one of ordinary skill in the art to modify the Matsuno filling apparatus through the use of disposable tubes, as taught by Stach, in order to avoid potential cross contamination should the Matsuno device be used to dispense more than one type of chemical.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Abe et al. (US Patent 4,853,546) discloses a radioisotope filling apparatus which combines a radioactive solution with a diluent. Martinell Gisper-Sauch et al. (US Patent 7,117,901) discloses an apparatus which fills a syringe with a liquid mixture. GB 1,415,804 A discloses a fully shielded dispensing system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON K. NIESZ whose telephone number is (571)270-3920. The examiner can normally be reached on mon-fri 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jason K Niesz

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Examiner
Art Unit 3751

/Timothy L Maust/
for Gregory Huson, SPE of Art Unit 3751